Supreme Court, U.S.
FILED
JUN 5 1992
OFFICE OF THE CLERK

91-1964

No.

IN THE

Supreme Court of the United States

October Term 1991

WILBUR H. FRIEDMAN, JR.

Petitioner

v.

SUPERVISOR OF ASSESSMENTS
OF MONTGOMERY COUNTY

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF SPECIAL APPEALS OF MARYLAND

PETITION FOR WRIT OF CERTIORARI

Wilbur H. Friedman, Jr.
Petitioner, Pro Se
Room 863
1717 Pennsylvania Ave., N.W.
Washington, D.C. 20570
(202) 254-9329

Mark Theodore
Co-Counsel for Petitioner
1717 Pennsylvania Ave., N.W.
Room 861-A
Washington, D.C. 20570
(202) 254-8998

Balmar Legal Publishing Services, Washington, D.C., 202-682-9800

QUESTION PRESENTED

Whether the following requirement imposed by the Court of Special Appeals improperly burdens the Petitioner-taxpayer's enjoyment of the equal protection rights recently reaffirmed by this Court in *Allegheny-Pittsburgh Coal Co. v. County Commissioner of Webster County, W. Va.*, 488 U.S. 336 (1989):

> If ... it is determined that the [taxpayer's] property was assessed at no more than its fair cash value, then it is incumbent on the taxpayer challenging his assessment to show that it was fraudulently made. The taxpayer who is unable to make such a showing has failed successfully to challenge his assessment on equal protection grounds.

TABLE OF CONTENTS

	PAGE
REFERENCE TO DECISIONS BY THE LOWER COURTS	1
JURISDICTIONAL STATEMENT	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT	2
ARGUMENT	6
1. The state courts have been uneven in their post-*Allegheny-Pittsburgh* decisions. The concept of systematic and intentional discrimination deserves further explication from this Court.	6
2. The Court of Special Appeals has asserted a discretion to veto the exercise of *Allegheny-Pittsburgh* rights.	7
3. On the merits, the Petitioner has established systematic and intentional discrimination.	9
4. The conduct of the Maryland courts also raises substantial issues of fiscal and social policy.	10
CONCLUSION	11
APPENDIX	
Order of the Court of Appeals, denying petition for writ of certiorari	A1
Unreported order of the Court of Special Appeals denying Petitioner's motion to withdraw its decision, emend same, and reissue it as a published decision	A2
Unreported opinion of the Court of Special Appeals	A3

Constitution of the United States, Fourteenth Amendment, Section 1 . . . . . A17

Constitution of Maryland, Declaration of Rights, Article 15 . . . . . A17

28 U.S.C. Sec. 1341 . . . . . A17

TABLE OF AUTHORITIES

CASES	PAGE(S)
Alexander v. Town of Barton, 152 Vt. 148, 565 A.2d 1294 (1989).	6
Allegheny Pittsburgh Coal Co. v. County Commissioner of Webster County, W. Va. 488 U.S. 336 (1989).	3, 4, 6, 7, 8, 9
Appel v. Hupfield, 198 Md. 374, 84 A.2d 94 (1951)	8
Averback v. Board of Assessors, ___ A.D.2d ___, 575 N.Y.S2d 964 (AD 3 Dept. 1991)	7
Charleston Assn. v. Alderson, 324 U.S. 182 rehearing denied 324 U.S. 888 (1945)	4
Farmers Union v. Grand Forks County, 443 N.W.2d 907 (1989).	6
In Re 1975 Tax Assessments Against Oneida Coal Co., 360 S.E.2d 560 (W. Va. 1987).	9
Mathews v. Eldridge, 424 U.S. 319 (1976).	10
Mathias v. Department of Revenue, 312 Or. 50, 817 P.2d 272 (1991).	7
Moser v. Town of Phippsburg, 553 A.2d 1249 (1989).	6
NLRB v. Great Dane Trailers, 388 U.S. 26 (1967).	4
Ozier v. Seminole County Property Appraiser, 585 So.2d 353 (Fla. App. 5 Dist. 1991).	7
Personnel Administrator of Mass. v. Feeney, 442 U.S. 256 (1979).	4, 10
Rosewell v. La Salle National Bank, 450 U.S. 503 (1981).	6

Sioux City Bridge v. Dakota County, 260 U.S. 441 (1922). 3

Spokane & Eastern Trust Co. v. Spokane County, 70 Wash. 48, 126 P. 54 (1912). 9

Supervisor of Assessments v. Scheidt, 85 Md. App. 154, 582 A.2d 563 (1990). 9

United Steelworkers v. Bethlehem Steel, 298 Md. 665, 472 A. 2d 62 (1984). 10

Weinberger v. Weisenfeld, 420 U.S. 636 (1975) . . 4

West Milford T.P. v. Van Decker, 120 N.J. 354, 576 A.2d 881 (1990) 6

CONSTITUTIONAL, STATUTORY

Maryland Declaration of Rights, Article 15 1

28 U.S.C. Sec. 1341 . . . . . 1, 6

OTHER

37 Am. Jur. 2d *"Fraud and Deceit"* 8

3 K.C. Davis, Administrative Law Treatise 2d . . . 8

5 K.C. Davis Administrative Law Treatise 2d . . . 9

The New York Times, May 29, 1990. 10

IN THE

Supreme Court Of The United States

No. ___

October Term 1991

WILBUR H. FRIEDMAN, JR.

Petitioner

v.

SUPERVISOR OF ASSESSMENTS
OF MONTGOMERY COUNTY

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF SPECIAL APPEALS OF MARYLAND

REFERENCE TO DECISIONS BY THE LOWER COURTS [1]

The Appendix contains: the order of the Court of Appeals, A.1, denying a timely petition for a writ of certiorari, reported at 325 Md. 620, 602 A.2d 710; the unreported order of the Court of Special Appeals, A. 2, in which it denied the Petitioner's motion to withdraw its decision, emend same, and reissue it as a published decision; and A. 3, the unreported opinion of the Court of Special Appeals herein.

JURISDICTIONAL STATEMENT

The order of the Court of Appeals of Maryland, A.1, denying a timely petition for a writ of certiorari, is dated March 10, 1992. Jurisdiction of this Court lies under 28 U.S.C. 1257, 28 U.S.C. 2101(c), and Rule 10.1. (b) and (c) of this Court.

---

[1] The names of all parties herein appear in the caption.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The 14th Amendment, Sec. 1, Article 15 of the Maryland Declaration of Rights, and 28 U.S.C. Sec. 1341 appear in the Appendix.

STATEMENT

The Maryland Declaration of Rights, Article 15, provides that "all taxes... levied by the State... and by the Counties... shall be uniform within each class or sub-class of land, improvements on land, and personal property." Pursuant thereto, assessors make separate assessments for land and the improvements thereon. The subdivision wherein the Petitioner's house is located is residential, with about 74 detached houses and 96 row houses.[2] The Petitioner's house is one of a group of houses which the Petitioner has consistently referred to as the "smaller, older houses" in his subdivision and which the assessor has referred to as the "one and one half story houses." [3] The assessor originally raised the assessment of the Petitioner's house from $54100 to $83200, an increase of 53.8%. [4] As for the 17 older, smaller houses in the sample, [5] the increase in assessed values of the houses ran from 51.8% to 55.8%. No other house in the subdivision received a reassessment at any rate of increase close to the rate of increase of the smaller, older houses. As for the subdivision as a whole, [6] the proposed reassessment raised the valuation of the houses from $11.424 million to $14.420 million, an increase of only 26.6%. As for the rate of increase for

---

[2] E. 48, 55. "E" references are to the record extract filed with the Court of Special Appeals.

[3] E. 30, line 15 through E. 31, line 1.

[4] E. 98.

[5] E. 98, lines 11-15, 18-20, 23-25, 32, 34-35, and 37-38.

[6] E. 98, line 54.

some of the newer, larger houses in the subdivision, that rate is much less than the rate of the older, smaller houses. [7]

The Petitioner has complained of this disparity at all times. [8] The assessor has had several opportunities to state reasons why the increase of the assessments of the older, smaller houses was substantially greater than the increase in the other assessments, but has never tried to do so.

The Petitioner had argued [9] that he had established "systematic and intentional discrimination" against him and the owners of the smaller, older houses within the meaning of *Allegheny Pittsburgh Coal Co. v. County Commissioner of Webster County, W. Va.* [10] The presence of a sufficient number of houses in the disfavored and favored classes, and the absence of an explanation from the assessor for the different assessment increases together establish that the discrimination was "systematic."

Thus, in *Sioux City Bridge v. Dakota County*,[11] Chief Justice Taft allowed that there could be a denial of equal protection where

> [O]ne or a few of a class of taxpayers are assessed at 100 per cent. of the value of their property in accord with a constitutional or statutory requirement, and the rest of the class are intentionally assessed at a much lower percentage in violation of the law.

---

[7] For example, the assessed values of the Clark, Leahigh, Marks, R. Forsyth, Weisman, Lau, and T. Forsyth houses, E. 98, lines 10, 16, 17, 22, 26, 33, and 45, rose 34%, 28.7%, 29.9%, 28.7%, 33.2%, 24.4%, and 30.2% respectively.

[8] E. 38 (Property Tax Assessment Appeal Board), E. 79 (Maryland Tax Court). The Court of Special Appeals said, A. 7, that "The Tax Court, and later the Circuit Court, considered this argument..."

[9] See his main brief in the Court of Special Appeals, p. 12 ff.

[10] 488 U.S. 336 (1989).

[11] 260 U.S. 441, 446 (1922).

And where there has been enough intentionality, the requirement of systematic may disappear entirely. Thus, in *Charleston Assn. v. Alderson*, this Court, by Chief Justice Stone, collected the cases where the formula was intentional *or* systematic. [12]

The foregoing two factors also established that the discrimination was intentional. The Petitioner had relied on such cases as *Weinberger v. Weisenfeld*, [13] and *Personnel Administrator of Mass. v. Feeney*. [14] In *Weinberger*, this Court said, at fn. 16, that it need not accept at face value assertions of other nondiscriminatory purposes, where an examination of the legislative scheme and its history demonstrate that the asserted purpose could not have been a goal of the legislation. In *Feeney*, this Court said, at fn. 24, that the inquiry into discriminatory intent is practical, and at fn. 25, that when the

> adverse consequences... upon an identifiable group are... inevitable, a strong inference that the adverse effects were desired can reasonably be drawn....

The Petitioner had also relied on a case outside the field of equal protection, namely *NLRB v. Great Dane Trailers*, [15] which holds that where there is conduct whose adverse impact on the rights of the affected class is comparatively slight, even absent proof of a discriminatory motivation, the purported discriminator cannot prevail unless he comes up with a substantial and legitimate justification for his conduct.

The Court of Special Appeals thrice cited *Allegheny- Pittsburgh*. [16] It said:

---

[12] 324 U.S. 182, 191, rehearing denied 324 U.S. 888 (1945) (emphasis supplied).

[13] 420 U.S. 636, 648 (1975).

[14] 442 U.S. 256, 279 (1979).

[15] 388 U.S. 26, 33-35 (1967).

[16] A. 8, 10, 11.

> [W]hen a claim is made that an intrasubdivisional increase in assessment values, resulting in a disproportionate impact on the properties therein, constitutes a violation of equal protection.... [We consider]... three discrete questions: (1) was there an assessment of property at a lower proportion of its value than that of the complaining taxpayer"here the appellant?; (2) was the complaining taxpayer's property assessed at more than its fair cash value?; (3) was the assessment of the complaining taxpayer's property fraudulently made?.... [I]f the [first] answer is in the affirmative that we look to the issues of fairness and/or fraud in the assessment. If our inquiry proceeds, and it is determined that the appellant's property was assessed at no more than its fair cash value, then it is incumbent on the taxpayer challenging his assessment to show that it was fraudulently made. The taxpayer who is unable to make such a showing has failed successfully to challenge his assessment on equal protection grounds.
>
> [As to the first question,] the [Petitioner] has demonstrated, and the State does not appear to confute, that the increase in assessment of the newer, larger properties of the subdivision have been smaller " proportionate to their market value " than the increases in assessment of the older, smaller properties therein. Finding that the [foregoing criterion] has been satisfied,.... [17]

However, the court found that Petitioner failed to establish either the second or third elements of the Court of Special Appeals' test. Accordingly, he lost.

---

[17] A. 11-12.

ARGUMENT

1. The state courts have been uneven in their post-*Allegheny-Pittsburgh* decisions. The concept of systematic and intentional discrimination deserves further explication from this Court.

If a state provides a plain, speedy and efficient means of protesting an improper assessment, 28 U.S.C. Sec. 1341 bars the federal courts from granting relief. *Rosewell v. La Salle National Bank.* [18] The state courts, however, have been uneven in determining what is systematic and intentional discrimination. Like Maryland in the instant case, Maine imposes a high standard of proof on the taxpayer; it requires the taxpayer to establish that the assessment be fraudulent, dishonest, or illegal. [19] Vermont requires the taxpayer to establish that the distinctions in the treatment of similarly situated persons be wholly arbitrary and capricious. [20] North Dakota requires the taxpayer to establish gross disparities in assessments. [21] Far more charitable to taxpayers who claim unequal assessments than the foregoing states are such states as New Jersey and Oregon. In the New Jersey case, the assessor had been disparately increasing the assessment of newly purchased homes, as compared with ones owned by the same owners for longer periods of time. The state's highest court asserted that New Jersey has been in the forefront mandating equality of treatment in property taxation.[22] In the Oregon case, when a property owner owned four or more lots in a subdivision, the assessment for each lot was higher than for

---

[18] 450 U.S. 503 (1981).

[19] *Moser v. Town of Phippsburg*, 553 A.2d 1249 (1989).

[20] *Alexander v. Town of Barton*, 152 Vt. 148, 565 A.2d 1294, 1299 (1989).

[21] *Farmers Union v. Grand Forks County*, 443 N.W.2d 907 (1989).

[22] *West Milford T.P. v. Van Decker*, 120 N.J. 354, 576 A.2d 881, 884 (1990).

identical lots in the subdivision where the owner owned fewer than four lots. The state's highest court examined the justification for the practice, and found it wanting; that is, the level of scrutiny was more than rational basis scrutiny. The court said that where there is a conflict between true value and uniformity of assessment, the latter is paramount. [23] On facts identical to those herein, the taxpayer would also almost surely have prevailed in New York, where an intermediate court has held that a complaint, alleging different assessments of similar properties, stated a cause of action, [24] and in Florida, where an intermediate court held that *Allegheny-Pittsburgh* was inconsistent with an older state rule that that a taxpayer must prove that all, or substantially all, of the taxpayers in the class are underassessed in comparison with the complaining taxpayer. [25]

2. The Court of Special Appeals has asserted a discretion to veto the exercise of *Allegheny-Pittsburgh* rights.

By its terms, *Allegheny-Pittsburgh* permits a taxpayer whose property would otherwise have properly been assessed to claim a reduction in the assessment on the grounds that the assessor has intentionally underassessed a substantial number of other properties. The ideal is to save the taxpayer from paying a disproportionate share of the total property tax burden. [26] The Petitioner has, and other owners of smaller, older houses would have had, a meritorious cause of action under *Allegheny- Pit-*

---

[23] *Mathias v. Department of Revenue*, 312 Or. 50, 817 P.2d 272, 277 (1991).

[24] *Averback v. Board of Assessors*, ___ A.D.2d ___, 575 N.Y.S2d 964 (AD 3 Dept. 1991).

[25] *Ozier v. Seminole County Property Appraiser*, 585 So.2d 353 (Fla. App. 5 Dist. 1991).

[26] 488 U.S. at p. 346.

tsburgh. By imposing additional requirements of proof, the Court of Special Appeals has cut off that cause of action. [27]

The Court of Special Appeals' requirement that a taxpayer whose own property has been properly assessed must show fraud encumbers enjoyment of the *Allegheny Pittsburgh* rights because (a) fraud in general is an expansive and vague concept; (b) it is difficult if not impossible to prove that a public official engaged in actual fraud in the conduct of his official duties; and (c) the concept of constructive fraud leaves much to judicial discretion. As to (a), Fraud assumes... many degrees and forms. [28] As to (b), in *Appel v. Hupfield*, 198 Md. 374, 378, 84 A.2d 94 (1951), the Maryland Court of Appeals said that an action for fraud required a statement made with knowledge of its falsity and made with the intent of defrauding the plaintiff, detrimental reliance, and damage. It is difficult to see how this formula has any application to the conduct of a public official in the normal course of his official duties and, even if the formula were somehow applicable, equally difficult to establish the requisite intent. [29] As to (c), Constructive fraud... is a breach of a legal or equitable duty which... the law declares fraudulent.[30] Constructive fraud is what the state court says it is. The invocation of the doctrine of constructive fraud is functionally equivalent to an

---

[27] It may be argued that the taxpayer has the burden of producing evidence which establishes that there will not be a seasonable attainment of a rough equality in the tax treatment of similarly situated property owners. The short and dispositive answer is that what the assessor is doing, and its long term implications, are matters that the assessor best knows, and when the assessor elects not to provide an explanation of his/her conduct, imposing the burden of proof on the taxpayers will seriously erode the taxpayers' enjoyment of his *Allegheny-Pittsburgh* rights.

[28] 37 Am. Jur. 2d *"Fraud and Deceit,"* p. 17.

[29] See 3 K.C. Davis, Administrative Law Treatise 2d, Sec. 17:4, p. 285 ("May Courts Probe Administrators' Understanding?").

[30] 37 Am. Jur. 2d "*Fraud and Deceit*," p. 23.

assertion of sufficient discretion to enable a state court unsympathetic to *Allegheny-Pittsburgh* and its progenitors to dismiss a taxpayer suit based on *Allegheny-Pittsburgh*. And that is precisely what the Court of Special Appeals has done here. [31]

The Court of Special Appeals has given lip service[32] to *Allegheny-Pittsburgh*, but failed to comport itself with this Court's holding. Maryland's highest court has denied certiorari. The Petitioner submits that the Maryland courts so narrowly construed the holding of *Allegheny-Pittsburgh* that, as matters now stand, in Maryland, *In Re 1975 Tax Assessments Against Oneida Coal Co.*, [33] which held that a taxpayer may not seek in a hearing on his own assessment a reduction of his own assessment because other similar properties have been underassessed, far more accurately describes reality than does *Allegheny- Pittsburgh*, which overruled *Oneida*. In Maryland, this Court's decision is little more than an unrealizable ideal. [34]

3. On the merits, the Petitioner has established systematic and intentional discrimination.

The Petitioner renews the arguments, *supra*, he made before the Court of Special Appeals. As to reasons, it is hardly onerous to require the assessor to explain why she raised the assessments of different houses in the subdivision by amounts differing as much as those involved herein. The requirement of

---

[31] Cf. *Spokane & Eastern Trust Co. v. Spokane County*, 70 Wash. 48, 126 P. 54, 55 (1912), where the court found that where one kind of property had been assessed at 60% of market value, and all other kinds had been assessed at 40% of market value, the underassessments of other properties were "intentional and arbitrary," and there was constructive fraud.

[32] On lip service, see 5 K.C. Davis Administrative Law Treatise 2d, p. 136 (1984).

[33] 360 S.E.2d 560 (West Virginia, 1987).

[34] In the one published post-*Allegheny-Pittsburgh* decision by the Court of Special Appeals, the taxpayer also lost. *Supervisor of Assessments v. Scheidt*, 85 Md. App. 154, 582 A.2d 563 (1990).

reasons is well established in administrative law in general and in Maryland administrative law in particular. *United Steelworkers v. Bethlehem Steel.* [35]

4. The conduct of the Maryland Courts also raises substantial issues of fiscal and social policy.

With noteworthy exceptions, rich people live in expensive houses and poor people live in inexpensive houses. The disproportionate increase in the assessments of the less expensive houses herein tends to render the property tax regressive. See *The New York Times*, May 29, 1990, p.1 When Wealthy Pay Less Tax Than Other Homeowners.... Property-Tax Bias: An Unfair System Grows More Inequitable. A requirement that the assessor explain the disparities in the assessments herein would tend to affect the future conduct of Maryland assessors, and to reduce the regressive character of the property tax. [36]

---

[35] 298 Md. 665, 472 A. 2d 62, 69 (1984).

[36] However, as the inquiry into discriminatory intent is practical, *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256, 279, fn. 24 (1979), it is unnecessary for this Court to constitutionalize the requirement of reasons. But even if it did so, the requirement would survive a *Mathews v. Eldridge*, 424 U.S. 319 (1976), analysis.

CONCLUSION

The Court should grant certiorari herein and reverse.

Respectfully submitted,

Wilbur H. Friedman, Jr.

Petitioner Pro Se

Mark Theodore

Co-Counsel for Petitioner

June 5, 1992

IN THE

Court Of Appeals Of Maryland

Petition Docket No. 582
September Term, 1991

(No. 220, September Term, 1991
Court of Special Appeals)

WILBUR H. FRIEDMAN

v.

SUPERVISOR OF ASSESSMENTS OF
MONTGOMERY COUNTY

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the answer filed thereto in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby denied as there has been no showing that review by certiorari is desirable and in the public interest.

Date: March 10, 1992

/s/

Court of Special Appeals

January 9, 1992
Wilbur H. Friedman
11404 Norris Drive
Silver Spring, Md. 20902

Re: Wilbur H. Friedman vs. Supervisor of Assessments of Montgomery County

No. 220, September Term, 1991

Dear Mr. Friedman:

Be advised that by Order of this Court dated January 8, 1992, Appellant's Motion that Court Withdraw Decision, Remand [1] Same and Reissue as Published Decision was denied. The mandate of the Court, which issued today, is enclosed.

/s/

cc: David M. Lyon, Esq.

---

[1] *Recte*, "Emend."

UNREPORTED

IN THE

Court Of Special Appeals

OF MARYLAND

No. 220
September Term, 1991

WILBUR H. FRIEDMAN

v.

SUPERVISOR OF ASSESSMENTS OF
MONTGOMERY COUNTY

Moylan,
Garrity,
Fischer, JJ.

PER CURIAM

Filed: December 9, 1991

This appeal arises from the assessment of real property, located at 11404 Norris Drive, Montgomery County, Maryland (hereinafter the property). The appellant and owner of the property, Wilbur H. Friedman, appeals an order of the Circuit Court for Montgomery County (Messitte, J. presiding). That order affirmed the tax assessment value computed for his property by the Supervisor of Assessments of Montgomery County (hereinafter the Supervisor).

In consideration of the contentions made by the appellant in his appeal before this Court, it is necessary that we set forth a rough chronology of pertinent events. The record establishes that the Supervisor initially assessed the property which is the

subject of this appeal at $123,830. The appellant contested that assessment. On appeal and as a consequence of a meeting between the assessor and the appellant, that figure was reduced to $118,630. His dissatisfaction persisting, the appellant then appealed, as was his right, to the Property Tax Assessment Appeal Board for Montgomery County. That body affirmed the $118,630 assessment value.

The appellant, his displeasure unmollified, again appealed, this time to the Maryland Tax Court. A hearing was initially held before Hearing Examiner Judith Showalter. After due consideration, Examiner Showalter recommended to the Tax Court that it affirm the assessment figure. The Tax Court in turn adopted the recommendation of the Hearing Examiner and affirmed the assessment.

In response to this affirmation, the appellant then appealed to the Circuit Court for Montgomery County. Memoranda were submitted and oral argument had before that court. On December 20, 1990, the court issued an oral opinion and order affirming the assessment. This case represents an appeal from that court order.

On appeal, the appellant raises three issues for our consideration. In essence he contends:

> 1) That the trial court committed error when it affirmed the Tax Court's finding that the Supervisor of Assessments had not engaged in systematic and intentional discrimination in contravention of the 14th Amendment to the United States Constitution and the Maryland Constitution's Declaration of Rights;
>
> 2) That the trial court committed error when it affirmed the Maryland Tax Court's affirmation of a decision of the Supervisor of Assessments denying appellant's requested depreciation allowance and imposing a $118,630 assessment value; and

3) That the trial court committed error when it refused to permit the introduction of additional evidence proffered by the appellant.

We disagree. We find no error as to contentions 1 and 2 and examine those issues seriatim. As to contention 3, we find that this issue is not properly before this Court and consequently do not address it.

This Court initially considers appellant's constitutional argument. To reiterate, the appellant asserts that in deriving the assessment value for his property, the Supervisor of Assessments violated the equal protection clause of the 14th Amendment to the United States Constitution as well as provisions of the Maryland Declaration of Rights. He argues, in essence, that because the assessment of the higher assessed properties in the area have not increased as quickly as the assessment of those properties previously assessed at a lower value, the system of assessment is constitutionally infirm. *Friedman v. Supervisor of Assessments of Montgomery County*, No. 220 (Md. App. 1991). The appellant concludes that this error in the system somehow discriminates against properties similarly situated and violates the Equal Protection Clause...

We commence our analysis of the foregoing issue with the observation that Human nature being what it is, the average taxpayer wishes to purchase at the lowest possible cost and to be assessed for tax purposes at the lowest possible amount, but to sell for the highest dollar amount possible. *Fairchild H. Corp. v. Supervisor of A. for Wash. Co.*, 267 Md. 519, 520, 298 A.2d 148 (1973). H.H. Walker Lewis in his article Equality in Property Assessments, 9 *Md. L. Rev.* 246 (1948), tells us that the Maryland Constitution of 1776 established equality as a basic principle of property taxation, brought about by such pre-1776 actions as the Act of 1756. *Weil v. Supervisors of Assessments of Washington Co.*, 266 Md. 238, 240, 292 A.2d 68 (1972). Lewis notes that the Act of 1756 'placed twice as

heavy a tax on the property of papists as on that of non-papists.' 9 *Md. L. Rev.* 246. That act also imposed a duty on 'all Bachelors of twenty-five years of Age and upwards' varying according to their worth. Differences of opinion as to what constitutes equality continue on into the present and produce this litigation.

In brief explanation of the essential background of this appeal, we summarize the process of real property assessment.

There are three components to the mathematical formula employed to determine the yearly dollar amount of tax due the State from an individual owner of real property. These components are: (1) the market value of the property, (2) the debasement factor (level of assessment) to be applied to market value to determine the assessment (assessed value), and (3) the tax rate. *District of Columbia v. Green*, 310 A.2d 848 (D.C. App. 1973). Market value (also referred to as estimated market value) is the fair market value of a particular property as determined from time to time by county assessors. The debasement factor is the percentage of market value upon which the tax will be levied. The tax rate is commonly expressed in terms of dollars per hundred.

The assessment of an individual taxpayer is determined by multiplying the market value of the property by the debasement factor or level of assessment. The tax rate applied to the assessed value of the property is set by the appropriate governmental bodies and, like the level of assessment, is fixed. The third component of the above equation, market value, is a variable, with each individual property having a unique estimated value.

The appellant's argument is that as a consequence of the Supervisor's reassessment of the subdivision in which appellant's property is located, the newer and larger and more expensive houses had their assessed values increased at a lesser proportion to their market value, than did the older smaller houses. Stated in reverse, appellant contends that the older,

smaller houses of the subdivision had their assessment values disproportionately increased as compared to the assessment values of the newer, larger houses of the subdivision. Appellant then argues that this disparate treatment of property located within the same subdivision constitutes, amongst other things, a violation of equal protection. The Tax Court, and later the Circuit Court, considered this argument, and found it to be without merit. We also find it to be unpersuasive.

Before turning our attention to the merits of the appellant's contention, we take note of the limited scope of review which this court enjoys when considering a decision of the Maryland Tax Court. This circumscribed scope of review will be examined more fully later in our analysis. For now its is enough to observe that the standard by which a result reached by the Tax Court is reviewed is whether a reasoning mind reasonably could have reached the factual conclusion which that agency reached. *Comptroller of the Treas., Inc. v. Diebold, Inc.*, 279 Md. 401, 369 A.2d 77 (1977).

It is well recognized that the constitutional guarantee of equal protection of the law is afforded to all persons under like circumstances in the enjoyment of their civil and personal rights. *Leonardo v. County Comm.*, 214 Md. 287, 134 A.2d 284 (1957), cert. denied, 355 U.S. 906, 78 S.Ct. 332, 2 L.Ed.2d 260 (1957); *Tatlebaum v. Pantex Mfg. Corp.*, 204 Md. 360, 104 A.2d 813 (1954). Maryland case law holds that where all persons who are in like circumstances are treated the same under the laws, there is no deprivation of equal protection. Conversely, this same case law establishes that a law which operates upon some persons or corporations, and not upon others like situated or circumstanced, or in the same class, is invalid. *Attorney General v. Waldron*, 289 Md. 683, 726, 426 A.2d 929 (1981). See *Wheeler v. State*, 281 Md. 593, 380 A.2d 1052 (1977); *Salisbury Beauty Schools v. St. Bd.*, 268 Md. 32, 300 A.2d 367 (1973).

It has become almost axiomatic that the equal protection clause of the Fourteenth Amendment does not require absolute mathematical equality in regard to taxation, however. *Vournas v. Montgomery County*, 53 Md. App. 243, 247, 452 A.2d 1263 (1982), *aff'd*, 300 Md. 123, 476 A.2d 705 (1984). *See Allegheny Pitt. v. Webster County*, 488 U.S. 336, 109 S.Ct. 633, 102 L.Ed.2d 688 (1989); *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 79 S.Ct. 437, 3 L.Ed.2d 480 (1959); *State Dept. of Assess. & Tax. v. Greyhound Comp. Corp.*, 271 Md. 575, 320 A.2d 40 (1974); *Lane Construction Corp. v. Comptroller*, 228 Md. 90, 178 A.2d 904 (1962). In *Lane Construction*, the Court of Appeals observed that:

> "[I]t [the equal protection clause] permits great 'flexibility and variety that are appropriate to reasonable schemes of state taxation' as long as a classification is not *per se* or in practical operation palpably arbitrary. *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 526, [79 S.Ct. 437], 3 L.Ed.2d 480. '[T]he presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive demonstration against particular persons and classes.' *Madden v. Kentucky*, 209 U.S. 83, 88 [60 S.Ct. 406, 408], 84 L.Ed 590. If on any imaginable factual basis, the state legislature had a reason to distinguish between certain transactions, and thus to tax them somewhat differently, the classification will be upheld. *Allied American Co. v. Comm'r*, 219 Md. 607, 623 [150 A.2d 421]. [228 Md. at 97, 178 A.2d 904].

Lane, 228 Md. at 97.

Later, in *Vournas v. Montgomery County*, this Court further elaborated upon the dictates of equal protection and the showing necessary to prove a violation thereof. There we opined that:

> "Only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes can the presumption of constitutionality be rebutted.... The fact that in a particular instance the effect of the tax imposed may be to treat certain transactions or taxpayers differently, absent a showing that it is without reasonable basis and is entirely arbitrary, does not amount to such a discriminatory classification as to be violative of constitutional guarantees.

Vournas, 53 Md. App. at 248. Somewhat earlier, in *Weil v. Supervisor of Assessments of Washington Co.*, the Court of Appeals had occasion to consider the issue of equal protection as it relates to real property taxation. The Court surveyed the law in this area and in doing so took particular note of the unique characteristics and particular difficulties associated with real property assessment. Quoting from a decision penned by Judge Collins, *State Tax Comm. v. Chesapeake & Potomac Tel. Co.*, 193 Md. 222, 235, 66 A.2d 477 (1948), the Court observed that:

> "'Valuation of property for taxation is one of the oldest forms of administrative power and the courts should not interfere with the exercise of this administrative power unless it is unlawful, unreasonable, or against the substantial weight of the evidence. Perfect equality is unattainable. If assessments could be upset by comparison of a few widely different properties, on the basis of a selected few of the many elements or evidences of value, no assessment could stand.'

Weil, 266 Md. at 252. The Court continued by quoting from *Rogan v. County Commissioners of Calvert County*, 194 Md. 299, 71 A.2d 47 (1950). Particularly relevant to the issue *sub judice* was the *Rogan* court's observation that:

> "'The purpose of the equal protection clause of the Fourteenth Amendment of the Constitution of the United States is to protect every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the provisions of a statute or by improper enforcement of a statute. Intentional and systematic undervaluation by assessors of other taxable property in the same class violates the constitutional right of a person taxed upon the full value of his property. However, mere errors of judgment on the part of State or County officials in making assessments will not support a claim of discrimination. There must be something which in effect amounts to an intentional violation of the essential principle of practical uniformity. The good faith of such officials and the validity of their action will be presumed... We accept the rule, as adopted in other States, that the assessment of the property of others at a lower proportion of its value than that of a complaining taxpayer, which is not assessed at more than its fair cash value, does not make the tax on the latter invalid, unless the assessment was fraudulently made.' (Emphasis added.)

Weil, 266 Md. at 252-53 (quoting Rogan, 194 Md. at 309, 313).

Finally, in *Allegheny Pitt. v. Webster County, supra*, the Supreme Court of the United States provided an extensive analysis of the relationship between the mandates of equal protection and property assessment. There the Court noted that, in principle, taxes laid directly upon property, as such, must be equal, uniform and according to the actual worth of all property in the same class located within the State. *Allegheny Pitt.*, 102 L.Ed.2d at 697. In so doing, however, the Court stressed that this was merely a general proposition. Writing for the Court, Justice Rehnquist opined that:

> "Just as that Clause [the Equal Protection Clause] tolerates occasional errors of state law or mistakes in judgment when valuing property for tax purposes... it does not require immediate general adjustment on the basis of the latest market developments. In each case, the constitutional requirement is the seasonable attainment of a rough equality in tax treatment of similarly situated property owners.

Id.

At this point, we note that the appellant contends not only that the Supervisor's conduct constituted a violation of the Equal Protection Clause of the Fourteenth Amendment, but contravention of the equal treatment concept embodied in the Maryland Declaration of Rights. Thus far we have addressed only the issue of equal protection. We need not undertake an independent analysis of appellant's Declaration of Rights contention, however. This is so because the Equal Protection Clause and the equal treatment concept of the Declaration of Rights have consistently been construed by the courts of this State to be *in pari materia*. *Hornbeck v. Somerset County Bd. of Educ.*, 295 Md. 597, 640, 458 A.2d 758 (1983). See *Attorney General v. Waldron*, 289 Md. 683, 426 A.2d 929 (1981); *Pitsenberger v. Pitsenberger*, 287 Md. 20, 410 A.2d 1052 (1980); *Governor v. Exxon Corp.*, 279 Md. 410, 372 A.2d 237 (1977), *aff'd*, 437 U.S. 117, 98 S.Ct. 2207, 57 L.Ed.2d 91 (1978). They generally apply in like manner and to the same extent. *Hornbeck*, 295 Md. at 640. The Court of Appeals has long recognized that decisions of the Supreme Court interpreting the Equal Protection Clause of the federal constitution are persuasive authority in cases involving the equal treatment provisions of the Declaration of Rights. *Id.* (citing *Waldron*, 289 Md. 683; *Bureau of Mines v. George's Creek*, 272 Md. 143, 321 A.2d 748 (1974)).

We turn now to application of the criteria set forth in *Weil*, and *Rogan*. These criteria are triggered when a claim is made

that an intrasubdivisional increase in assessment values, resulting in a disproportionate impact on the properties therein, constitutes a violation of equal protection. Application of these criteria can best be accomplished by considering them as three discrete questions: (1) was there an assessment of property at a lower proportion of its value than that of the complaining taxpayer"here the appellant?; (2) was the complaining taxpayer's property assessed at more than its fair cash value?; (3) was the assessment of the complaining taxpayer's property fraudulently made?

The first criterion is a necessary prerequisite to consideration of the subsequent two criteria. If the answer to its interrogatory is in the negative, then our inquiry ends. It is only if the answer is in the affirmative that we look to the issues of fairness and/or fraud in the assessment. If our inquiry proceeds, and it is determined that the appellant's property was assessed at no more than its fair cash value, then it is incumbent on the taxpayer challenging his assessment to show that it was fraudulently made. The taxpayer who is unable to make such a showing has failed successfully to challenge his assessment on equal protection grounds.

We turn now to consideration of these criteria. First, the appellant has presented evidence as to the disproportionate impact of the assessment increases on some of the properties of the subdivision. The appellant has demonstrated, and the State does not appear to confute, that the increase in assessment of the newer, larger, properties of the subdivision have been smaller"proportionate to their market value"than the increases in assessment of the older, smaller properties therein.

Finding that the first criterion has been satisfied, we consider whether the appellant's property has been assessed at more than its fair cash value. In the case *sub judice*, the Tax Court affirmed the Supervisor's assessment of the appellant's property.

It held that the assessment was proper and did not exceed the fair cash value of the property. Bearing in mind the limited scope of review which this Court enjoys when examining a decision of the Tax Court, and for reasons we will develop later in our analysis, we are in agreement with that court. We conclude that there was sufficient evidence presented to the Tax Court for it to find that the assessment of the appellant's property was for no more than its fair cash value.

We turn now to consideration of the third criterion; whether the Supervisor's assessment of appellant's property was fraudulent. After reviewing the record of the earlier disposition of this appeal, and considering the briefs submitted by both parties, we conclude that the appellant has utterly failed to demonstrate the existence of fraud in the assessment of his property. We simply find no evidence that the Supervisor acted in any way other than in the manner prescribed by law.

After reviewing each of the three criteria, and applying them to the facts of the case at bar, this Court concludes that the appellant has failed to demonstrate that the reassessment of his property constituted a violation of equal protection. The appellant has failed to show either that his property was assessed at greater than its cash value, or that the assessment was tainted by fraud. We find no error.

We turn next to an examination of the appellants second contention. To reiterate, the appellant contends that the trial court committed error when it affirmed a decision of the Tax Court sustaining the Supervisor's assessment of the appellant's property. We begin by again noting that judicial review of decisions of the Maryland Tax Court is severely limited. *Board of Educ., Mont. Co. v. Paynter*, 303 Md. 22, 491 A.2d 1186 (1985); *Ramsay, Scarlett & Company v. Comptroller*, 302 Md. 825, 834, 490 A.2d 1296 (1985); *Balto. Lutheran High Sch. v. Emp. Sec. Adm.*, 302 Md. 649, 490 A.2d 701 (1985); *Supervisor of Assess. v. Carroll*, 298 Md. 311, 469 A.2d 858 (1984);

Diebold, 279 Md. 401. Code (1957, 1969 Repl. Vol.) Art. 81, Sec. 229(1) provided:

> "the circuit court... shall determine the case upon the record of the Maryland Tax Court...; provided, that unless such order is erroneous as a matter of law or unsupported by substantial evidence appearing in the record, it shall be affirmed. [2]

The Court of Appeals has uniformly held that the standard by which a result reached by the Tax Court is reviewed is whether a reasoning mind reasonably could have reached the factual conclusion which that agency reached. *Diebold*, 279 Md. at 407. It has admonishingly observed that the application of this test is not and must not be either judicial fact finding or a substitution of judicial judgment for agency judgment. *Id.* A reviewing court may not substitute its judgment for the expertise of the agency but must review the agency's decision in the light most favorable to it. *Ramsay, Scarlett*, 302 Md. at 834. The agency's decision is prima facie correct and presumed valid and it is the agency's province to resolve conflicting evidence and where inconsistent inferences can be drawn from the same evidence it is for the agency to draw the inferences. *Id.*

The valuation of appellant's property for purposes of tax assessment was a factual determination within the expertise of the Tax Court. In arriving at its decision, the court considered diverse forms of detailed evidence, which substantiated the Supervisor's assessment. The assessor placed into evidence an appraisal which valued the property via a standard market analysis as well as an appraisal employing a cost approach. The latter analysis was not disputed by the appellant except as it related to the depreciation allowance accorded the property. In regard to the depreciation allowance, the assessor made clear in

---

[2] The present provision, which is substantially similar, may be found in Maryland Code (1957, 1975 Repl. Vol., 1976 Cum. Supp.) Art. 81, Sec. 229(o).

her testimony that if she felt further adjustments in depreciation were necessary, she would have included them. We find that the assessor did provide substantial evidence in support of the Supervisor's assessment. Returning to the narrow limits imposed upon our review, we cannot say that a reasoning mind could not have reasonably reached this factual conclusion on the evidence, nor do we discern any error of law. We therefore affirm the Tax Court's order. *Diebold*, 279 Md. at 408.

We now consider appellant's third contention. He asserts that the trial court committed error when it refused to permit the introduction of additional evidence which he sought to have admitted. We find that the issue as to the circuit court's refusal to review additional evidence is not properly before this Court.

At trial, the appellant sought to introduce two items " a letter he had written to the Supervisor and the Supervisor's written response thereto. The appellant first raised the issue of the two letters in his Motion to Submit Additional Evidence. After response by the appellee, the appellant filed a subsequent pleading " a Motion to Submit Attached Additional Evidence. By way of response to these pleadings, the court issued an order denying the motion. The Appellant, unfazed, then filed a Motion for Reconsideration. The Court denied that motion as well. Aggrieved, the appellant renewed his motion orally at the hearing held before Judge Messitte, at which time it was again denied.

As the appellee has accurately observed, none of the foregoing"appellant's pleadings, trial court orders, transcriptional excerpts of the proceedings before the court"have been presented to this Court for consideration. For us to make a determination that the trial court erred in denying his motion, we must consider these same pleadings. Yet the appellant has not printed the material in the record extract. To deny this Court the information it needs to determine properly the question is effectively to prevent us from reviewing the propriety of the trial

court's decision. *A.S. Abell Co. v. Skeen*, 265 Md. 53, 58, 288 A.2d 596 (1972).

Rule 8-501(c) states in relevant part that the printed extract shall contain such parts of the record as may be reasonably necessary for the determination of the question presented by the appeal... This Court, as well as the Court of Appeals, has called attention to this rule on myriad occasions. We have made it abundantly plain that compliance with it [Rule 8-501(c)] is 'a mandatory requirement.' *Id.* (quoting *Walsh v. Lewis Swim. Pool Constr.*, 256 Md. 608, 617, 261 A.2d 475 (1970)). See *State Hwy. Admin. v. Transamerica Ins. Co.*, 278 Md. 690, 367 A.2d 509 (1976); *Basiliko v. Royal Nat'l Bank*, 263 Md. 545, 284 A.2d 227 (1971); *Cohen v. American Home Assurance Co.*, 255 Md. 334, 258 A.2d 225 (1969). As a consequence of appellant's failure to comply with the mandatory provisions of Rule 8-501(c), the evidentiary issue proffered by the appellant is not properly before this Court. We do not consider it.

JUDGMENT AFFIRMED:

COSTS TO BE PAID BY APPELLANT.

Constitution of the United States, Fourteenth Amendment, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of Maryland, Declaration of Rights, Article 15

Poll taxes prohibited; paupers not to be assessed; uniformity of taxation.

That the levying of taxes by the poll is grievous and ought to be prohibited; that paupers ought not to be assessed for the support of the government; that the General Assembly shall, by uniform rules, provide for the separate assessment, classification and sub-classification of land, improvements on land and personal property, as it may deem proper; and all taxes thereafter provided to be levied by the State for the support of the general State Government, and by the Counties and by the City of Baltimore for their respective purposes, shall be uniform within each class or sub-class of land, improvements on land and personal property which the respective taxing powers may have directed to the subject to the tax levy; yet fines, duties or taxes may properly and justly be imposed, or laid with a political view for the good government and benefit of the community.

28 U.S.C. Sec. 1341

The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such state.